

REMARKS

In response to the Office Action mailed on March 30, 2004, Applicants submit the following Amendment and Response. Claims 56-69 remain pending. Support for these amendments can be found in the specification at, e.g., Fig. 6 and page 23, lines 9-11. Therefore, these amendments are made without the addition of new matter.

35 U.S.C. § 112

Claims 56-69 were rejected under 35 U.S.C. § 112, second paragraph, for allegedly failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. In particular, the examiner objected to the phrase “the portion of the flow cell orientated toward the biochip.” Applicants have amended claim 56 to delete this phrase. As suggested, applicants have also amended the claims to specify that the optical window, biochip, and flow cell define a sample chamber.

35 U.S.C. § 103

Claims 56-69 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hollis et al. (U.S. Patent No. 5,846,708) in view of Wilding et al. (U.S. Patent No. 5,726,026). Applicants have amended claim 56 to specify the fluidic system includes “an optical window that is disposed in a plane parallel to the biochip and between the fluid inlet and output ports, wherein the plane containing the optical window is offset from said planar portions of the flow cell defining the flow path.” Applicants respectfully assert that neither Hollis nor Wilding teach or suggest an optical window with the above-mentioned characteristics. Neither reference teaches an optical window that

meets or suggests the claim limitations. The optical window cited by the examiner in Wilding in Col. 10, lines 17-28 is a “transparent cover 29 ... [that] serves as a window which facilitates dynamic viewing of the contents of the device.” As seen in Fig. 1, the transparent cover 29 lies on top of the analytical device. Claims 57-69 are dependent on claim 56, and therefore, contain all of the limitations of amended claim 56. Applicants submit that neither Hollis nor Wilding teach or suggest all of the limitations of the claims as amended. Therefore, applicants respectfully request withdrawal of the rejection and reconsideration of the claims as amended.

Applicants submit that the claims, as amended, are free of the cited art and are in position for allowance. Please charge Deposit Account No. **50-2862** for the 1-month extension fee and any other fees required by this submission. If the Examiner has any questions regarding this communication, or feels that an interview might facilitate prosecution of the application, he is invited to contact the undersigned at (949) 737-2900.

Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: July 29, 2004

By: Diane K. Wong
Diane K. Wong
Reg. No. 54,550

DBM/DKW/dnd

O'Melveny & Myers LLP
114 Pacifica, Suite 100
Irvine, CA 92618-3315
(949) 737-2900